

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

ANTONIO GROSS, JR., RICHARD FINK, IV, and JOHN CUMMINGS,

Plaintiffs,

vs.

PHIL SACCHITELLA, Individually and in his capacity as Parent and Natural Guardian of DIANE SACCHITELLA, a Minor, DAN SACCHITELLA, and DIANE SACCHITELLA, a Minor,

Defendants.

**WAIVER OF SERVICE  
OF SUMMONS**

Civil Action No.: 07CV 6142T(P)

**TO: BOYLAN, BROWN, CODE, VIGDOR & WILSON, LLP**  
Attorneys for Plaintiff  
Mark A. Costello, Esq., of Counsel  
2400 Chase Square  
Rochester, New York 14604

I acknowledge receipt of your request that I waive service of a Summons in the action of *Antonio Gross, Jr., Richard Fink, IV, and John Cummings v. Phil Sacchitella, Individually and in his capacity as Parent and Natural Guardian of Diane Sacchitella, a Minor, Dan Sacchitella, and Diane Sacchitella, a Minor*, which is case number 07CV 6142T(P) in the United States District Court for the Western District of New York. I have also received a copy of the Complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a Summons and an additional copy of the Complaint in this lawsuit by not requiring that *Phil Sacchitella, Individually and in his capacity as Parent and Natural Guardian of Diane Sacchitella, a Minor, Dan Sacchitella, and Diane Sacchitella, a Minor*, the parties on whose behalf I am acting, be served with judicial process in the manner provided by Rule 4.

*Phil Sacchitella, Individually and in his capacity as Parent and Natural Guardian of Diane Sacchitella, a Minor, Dan Sacchitella, and Diane Sacchitella, a Minor* will retain all defenses or

objections to the lawsuit or to the jurisdiction or venue of the Court, except for objections based on a defect in the Summons or in the service of the Summons.

I understand that a judgment may be entered against *Phil Sacchitella, Individually and in his capacity as Parent and Natural Guardian of Diane Sacchitella, a Minor, Dan Sacchitella, and Diane Sacchitella, a Minor* if an answer or motion under Rule 12 is not served upon you within sixty (60) days after March 14, 2007, or within ninety (90) days after that date if the request was sent outside the United States.

**BARNES MORRIS KLEIN  
MARK YORN BARNES & LEVIN**

*Attorneys for Defendants*

*Phil Sacchitella, Individually and in his capacity as Parent and Natural Guardian of Diane Sacchitella, a Minor, Dan Sacchitella, and Diane Sacchitella, a Minor*

Dated: March 19, 2007

By:

  
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David M. Ferreria, Esq.  
1424 Second Street  
Santa Monica, CA 90401

#### **DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the Summons and Complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a Summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the Complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over its person or property. A party who waives service of the Summons retains all defenses and objections (except any relating to the Summons or the service of the Summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the Complaint and also must file a signed copy of the response with the Court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the Summons had been actually served when the request for waiver of service was received.